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**FEB 26 2009**

**OFFICE OF PETITIONS**

In re Application of  
Henry Duong  
Application No. 10/669,668  
Filed: September 23, 2003  
Attorney Docket No.

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ON PETITION

This is regarding the letter filed January 22, 2009, which will be treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **DISMISSED**.

The application became abandoned on November 17, 2007, after a proper response was not received to the Notice of Non-Compliant Appeal Brief mailed October 16, 2007, which set a shortened period for reply of one-months from its mailing date. A Notice of Abandonment was mailed April 30, 2008.

In the instant petition, petitioner maintains that the holding of abandonment was improper.

A review of the application file reveals that a Notice of Non-Compliant Appeal Brief was mailed on October 16, 2007. Communications were filed on January 25, 2008, February 19, 2008, and February 22, 2008, none of which were proper responses to the Notice of Non-Compliant Appeal Brief. On May 1, 2008, applicant filed an Appeal Brief and a Notice of Appeal that were not accompanied by the request for extension of time within the fifth month that would have been necessary to make the response timely. The application was properly held abandoned on November 17, 2007, because a proper and timely response to the Notice of Non-Compliant Appeal Brief was not filed within the allowable period. The petition is dismissed, accordingly.


Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1,620.00 for a large entity or \$810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
United States Patent and Trademark Office  
Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
Attn: Office of Petitions

Inquiries regarding the sufficiency of the reply to the Notice of Non-Compliant Appeal Brief should be directed to the Technology Center. Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.

  
Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions

Enclosure: Form PTO/SB/64